

**IN THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA**

IN RE:	:	OSAH DOCKET NO.:
	:	OSAH-SECSTATE-1-12246-11
BIBB COUNTY AND MONROE COUNTY,	:	
BOUNDARY LINE DISPUTE.	:	BOUND CASE NO.: 2009-000001
	:	

FINAL DETERMINATION

This matter comes before the Secretary of State for a final determination of the true boundary line in dispute between Bibb County and Monroe County pursuant to O.C.G.A. § 36-3-24. After considering the survey and plat (the “Survey”) filed by Terry M. Scarborough (“Scarborough”), the written submissions of the respective counties, the record evidence, the findings of fact and recommendation of the Special Assistant Administrative Law Judge (“SAALJ”), arguments of counsel at the final hearing and the law on this matter, the Secretary of State finds that Bibb County met its burden of proof by a preponderance of the evidence. It is therefore ordered that the Survey, filed in this Office on March 27, 2009, is hereby **SET ASIDE** and **SHALL NOT** be recorded as set forth in O.C.G.A. § 36-3-25.

I. BACKGROUND

A. Legal Background

The Georgia Constitution provides in relevant part, “[t]he metes and bounds of the several counties and the county sites shall remain as prescribed by law on June 30, 1983, unless changed under the operation of a general law.” Ga. Const. Art. IX, § I, Para. II(b) (2011). Furthermore, “it rests with the Legislature of the state not only to originally define the

boundaries, but also to provide means whereby the true localities of such boundaries on the ground may be finally determined.” *Early County v. Baker County*, 137 Ga. 126 (1911).

Under Georgia law, if the location of a county boundary line is in dispute, the grand jury of any affected county may issue a presentment that the boundary line needs to be marked out and defined, thus commencing the boundary line dispute process. O.C.G.A. § 36-3-20. The Governor shall then appoint “some suitable and competent land surveyor, who shall not reside in either county, to survey, mark out and define the boundary line in dispute and return the survey with plat to the Secretary of State’s office.” *Id.* If any county to the boundary line dispute files a protest or exceptions to the survey, the Secretary of State is required to hold a final hearing and “determine from the law and evidence the true boundary line in dispute between the respective counties.” O.C.G.A. §§ 36-3-23, 36-3-24.

Where a protest or exception causes considerable doubt as to the correctness of the survey and plat filed with the Secretary of State, the survey and plat may be set aside. *See, e.g., In re Baker County and Early County Disputed Boundary Line*, [Secretary of State’s Final Ruling] RG 3-1-74, at P.7 (Dec. 10, 1903). In this dispute, Monroe County and Bibb County have requested that the Secretary of State either accepts or rejects the Survey in its entirety or reject the Survey. [See Monroe County Brief dated March 30, 2011 at 19; Bibb County Post-Hearing Brief at 49.] Although O.C.G.A. § 36-3-20, *et seq.*, permits the Secretary of State to accept or reject the filed survey and plat, Georgia law does not confine the Secretary’s decision only to accepting or rejecting the filed survey and plat. *See* O.C.G.A. § 36-3-24 (2011); *see also Early County*, 137 Ga. at 128; *see e.g., In re Jasper County and Butts County Disputed Boundary Line*, [Secretary of State’s Final Ruling] RG 3-1-74, at P.10 (Mar. 29, 1915); *In re Baker County and Early County Disputed Boundary Line*, [Secretary of State’s Final Ruling] RG 3-1-74, at P.8

(June 9, 1910). However, where a survey and plat is rejected, O.C.G.A. § 36-3-20, *et seq.* does not contemplate the appointment of a new surveyor without first obtaining the required grand jury presentment and superior court clerk certification contained in O.C.G.A. § 36-3-20. *See* O.C.G.A. § 36-3-25.

Once the boundary line in dispute has been established as final and conclusive by the recording of the survey and plat, “the same boundary line shall not again be subject to the procedures set forth in [Article 3], and such boundary line may subsequently be changed only in accordance with [Article 1].” O.C.G.A. § 36-3-25. In this case, the boundary line in dispute is not final and conclusive because the Survey has been set aside and no survey and plat have been recorded pursuant to O.C.G.A. § 36-3-25. *See id.* Accordingly, the boundary line is not prohibited from being subject to the procedures set forth in O.C.G.A. § 36-3-20, *et seq.* *See id.*

Monroe County and Bibb County have both conceded that this dispute is not subject to the Georgia Administrative Procedure Act (“APA”), O.C.G.A. § 50-13-1, *et seq.* [See Monroe County Post-Hearing Brief at 6; Bibb County Post-Hearing at 6.] Since county boundary line disputes are not contested cases under the APA, determinations in such disputes are not subject to judicial review under the APA. *See* O.C.G.A. § 50-13-19. Although this boundary line dispute is not prohibited from again being subject to the procedures set forth in O.C.G.A. § 36-3-20, *et seq.*, Georgia law does not provide for the right to appeal a boundary line determination unless fraud or corruption can be shown. *See Aultman v. Hodge*, 147 Ga. 626, 631 (1918) (the right of appeal is a matter of grace and is fixed by statute); *see also Early County*, 137 Ga. at 128 (counties have no territorial rights as against the State).

B. Procedural Background

On November 9, 2004, a grand jury, serving the May 2004 through November 2004 Term of the Superior Court of Monroe County, issued a presentment that the boundary line between Bibb County and Monroe County needed to be marked out and defined. The Clerk of the Superior Court of Monroe County certified the presentment to the Governor, and on August 9, 2005, the Governor issued an Executive Order appointing Scarborough to survey, mark out and define the boundary line between Bibb County and Monroe County, commencing the boundary line dispute process pursuant to O.C.G.A. § 36-3-20, *et. seq.*¹

Subsequently, on March 27, 2009, Scarborough filed the Survey with the Secretary of State pursuant to O.C.G.A. § 36-3-23 and furnished the chairmen of the boards of county commissioners of Bibb County and Monroe County with a copy of the filed Survey. On April 7, 2009, less than 30 days after the Survey was filed, Bibb County filed its protest and exceptions (the "Protest") to the Survey in accordance with O.C.G.A. § 36-3-23. Monroe County filed its response to the Protest on May 5, 2009.

Due to an error in assignment by former Chief Administrative Law Judge Lois Oakley at the Georgia Office of State Administrative Hearings ("OSAH"), this matter had to be reassigned on October 9, 2009, to an SAALJ for the purpose of conducting the preliminary evidentiary hearing. John Sherrill was subsequently appointed SAALJ, and on October 16, 2009, the Secretary of State's Office transmitted a letter to OSAH setting forth the specific issues for the

¹ Scarborough was properly appointed by the Governor to survey the disputed boundary line pursuant to O.C.G.A. § 36-3-20. In regard to Bibb County's claims that Scarborough labored under a conflict of interest as he is the first cousin once removed of a former Monroe County Commissioner, neither the evidence nor Bibb County's reliance on Rule 180-6-.05 supports such a claim.

SAALJ to consider at a preliminary evidentiary hearing. The questions presented to the SAALJ included:

- (a) Whether the Survey and Plat filed on March 27, 2009, is an accurate depiction of the true boundary line between Bibb County and Monroe County as established by the Georgia General Assembly;
- (b) Whether the Survey and Plat filed on March 27, 2009 accounts for every change in the boundary line between Bibb County and Monroe County, including any changes made pursuant to Chapter 3, Article 1 of Title 36 in the Georgia Code;
- (c) Whether additional evidence exists that may substantially alter or provide support for the results of the Survey and Plat filed on March 27, 2009; and
- (d) Whether the methods utilized by the appointed surveyor in conducting the boundary line survey were in accordance with the applicable principles and industry standards in Georgia.

Despite a variety of unintended delays, SAALJ Sherrill held the preliminary evidentiary hearing from February 28, 2011 to March 2, 2011 and received evidence from Bibb County and Monroe County. Although SAALJ Sherrill sought the attendance of Scarborough at the preliminary evidentiary hearing, Scarborough did not attend. Due to Scarborough's failure to attend, SAALJ Sherrill did not have the opportunity to observe Scarborough first-hand, thus preventing a full examination of the evidence in this case.

On April 29, 2011, SAALJ Sherrill issued his findings of fact and recommendation (the "Recommendation") based on the record from the preliminary evidentiary hearing. As noted in the Recommendation, the record that SAALJ Sherrill considered consisted of written submissions of counsel and the attachments thereto, evidence admitted at the preliminary evidentiary hearing, the transcript of the hearing, and the documents and pleadings constituting the OSAH file for this matter. [Recommendation at 1.] SAALJ Sherrill concluded that the methods Scarborough used in conducting the boundary line survey were in accordance with

industry standards for land surveyors in Georgia. [Recommendation at 16.] Although the Recommendation was silent in its conclusion on the accuracy or correctness of the ferry location identified in the Survey, the SAALJ noted in the Recommendation that “the best evidence presented at the hearing was that ‘Waller’s or Torrentine’s Ferry’ was the ferry known by both names located at the point identified by Mr. Scarborough.” [Recommendation at 10.]

Accordingly, the SAALJ recommended that Scarborough’s Survey be accepted.

[Recommendation at 16.]

On May 11, 2011, the Secretary of State issued an Order setting the final hearing in this matter for May 31, 2011. Per the Secretary of State’s May 11 Order, Scarborough’s attendance at the final hearing was again requested, along with a direction to the counties to pay any outstanding portion of the surveyor’s fee established under O.C.G.A. § 36-3-27. On May 31, 2011, both counties presented their arguments; however, similar to the preliminary hearing, Scarborough dismissed the Secretary of State’s May 11, 2011 Order and did not attend the final hearing. Both counties filed post-hearing briefs by the filing deadline of June 30, 2011, and the record in this matter closed as of that date.²

Following the closing of the case, the Secretary of State requested an update from both counties on the status of a possible mutual agreement. As of July 29, 2011, both counties notified the Secretary of State that they were at an impasse with respect to a mutual agreement on the location of the boundary line.

II. STANDARD OF REVIEW

Bibb County, as the county filing the protest or exceptions to the Survey, bears the burden of proof by a preponderance of the evidence. While due regard is given to the SAALJ’s

² The counties are advised that Scarborough attempted to file additional evidence after the close of the record; however, such evidence could not be considered, as it was not timely received.

Recommendation, O.C.G.A. § 36-3-24 requires the Secretary of State to “determine from the law and evidence the true boundary line in dispute between the respective counties.”

III. DISCUSSION

Bibb County was created by an Act of the Georgia General Assembly during the November and December Annual Session of 1822. *See* Act of Dec. 9, 1822, § 2, 1822 Ga. Laws 22. The 1822 Act defined Bibb County as follows:

That all that tract of country hereinafter pointed out, viz. Beginning at Waller's or Torrentine's³ Ferry on the Ocmulgee river, running a direct line to the corner of the 12th and 13th districts of Monroe county on the line dividing Monroe and Houston counties, thence due south to Ichucconna creek, thence down said creek to where it enters into the Ocmulgee river; then beginning at Waller's or Torrentine's ferry, running down the Ocmulgee river to the mouth of a small branch just below William W. Brown's shoals, thence a direct line to the corner of the reserve near Mrs. Lavinia Hawkins' old mill, thence down the reserve line to the corner, thence to the corners of lots 96 and 86 in the 7th district of Baldwin originally, now Twiggs county, thence a direct line to Stone creek, thence down said creek until it strikes the dividing line of lots Nos 108 and 107, thence a direct line to the Ocmulgee river, thence down said river to the mouth of Ichucconna creek, forming another county to be called Bibb.

Act of Dec. 9, 1822, § 2, 1822 Ga. Laws 22 (1822 Act creating Bibb County).

In 1877, the General Assembly altered and changed the boundary line between Bibb County and Monroe County by removing the residence of Dr. Leonidas (“Lee”) Holt and his property in land lot No. 285 from Monroe County and adding it to Bibb County. Specifically, the Holt Alteration provided:

That the line between the counties of Bibb and Monroe, be altered and changed so that the residence of Dr. Lee Holt, and so much of lot No. 285 as belongs to said Dr. Holt, now lying and being in Monroe county, the same being about fifty or seventy-five acres, be taken from Monroe county, and added to, and made a part of, Bibb county.

Act of Feb. 20, 1877, No. 270, 1877 Ga. Laws 272-73 (the “Holt Alteration”).

³ The record shows that “Torrentine” was also spelled “Turrentine”.

A. The Location of “Waller’s or Torrentine’s Ferry”

The Act of the General Assembly creating Bibb County identified the point of beginning (the “POB”) in the legal description of Bibb County as, “[b]eginning at Waller’s or Torrentine’s ferry on the Ocmulgee River.” § 2, 1822 Ga. Laws at 22. Following the legal description in the 1822 Act creating Bibb County, a direct line is run from the POB on the Ocmulgee River to the “corner of the 12th and 13th districts of Monroe county [sic]” on the line dividing Monroe County and Houston County. *Id.* In order to determine the true boundary line between Bibb County and Monroe County, it is critical for the direct line running from the ferry on the Ocmulgee River (the POB) to the identified district corner (the terminating point) is accurately located. Failure to do so, as the Survey suggests, could result in the Holt Alteration being unconstitutional under Article III, Section V of the Georgia Constitution of 1868, which was Georgia’s Constitution at the time the Holt Alteration was enacted in February 1877.

Pursuant to the 1822 Act organizing Bibb County, the General Assembly authorized James Whatley to “run and mark” the dividing line between Bibb County and Monroe County. Act of Dec. 23, 1822, § 11, 1822 Ga. Laws 25-26 (Act to organize the counties of De Kalb, Pike, Crawford and Bibb). Mr. Whatley was the county surveyor for Monroe County. *See id.* Similar to the requirement in O.C.G.A. § 36-3-27 directing the counties in a boundary line dispute to divide the surveyor’s fee equally, the General Assembly directed Bibb County and Monroe County to “defray the expense equally for running the line between said counties . . .” *Id.* On September 1, 1823, Monroe County paid James Whatley \$25.00 as payment for its share of the expenses for running the line between Bibb County and Monroe County. [Exhibit B-84.] Subsequently, on July 26, 1824, the Inferior Court of Bibb County ordered the payment of

\$113.81 to James Whatley as compensation for running the boundary lines of Bibb County.⁴

[Exhibit B-93.]

Despite extensive efforts, neither a survey and plat nor field notes of James Whatley have been located by either county, Scarborough, or the Secretary of State's Department of Archives and History with respect to the survey he was authorized to run and mark under the 1822 Act.

According to the Survey, on September 17, 2008, Scarborough arrived at the Ocmulgee River for an inspection of the area where he believed Waller's or Torrentine's ferry must have been located. [Survey at 5.] To narrow the area being inspected, Scarborough initially relied on original field notes, land lot plats and the original plat for the 13th district originally of Monroe County. [Survey at 5.] The Survey indicates that these documents were vague, and as such, additional research was conducted by reviewing ancient records at the Jones County courthouse, Monroe County courthouse, the State Archives and the Bibb County courthouse in order to locate Waller's or Torrentine's ferry. [Recommendation at ¶ 36(b).]

During the initial inspection of the Ocmulgee River, the Survey indicates that Scarborough "began to notice that chiseled holes and tool marks were evident on the upstream side of what began to be imagined as the 'slip' or ferry landing." [Survey at 5.] According to the Survey, timbers were positioned in the chiseled holes and a pulley system was used to direct the ferry across the river. [Survey at 6.] Scarborough appended two pictures of an undated ferry operation to the Survey as support for this proposition. [Survey at A-3.]

In addition to noticing the chiseled holes that Scarborough imagined to be a ferry landing, Scarborough discovered discarded railroad materials and metallic objects secured to rocks in the

⁴ The discrepancy in amounts the two counties paid Whatley is the result of additional requirements set forth in the Act of December 23, 1822, directing Bibb County to defray the expenses of Whatley to run the lines between Bibb County and Crawford, Jones and Twiggs counties. See § 11, 1822 Ga. Laws. 25-26.

river. [Survey at 5.] The metallic objects included “wrought iron bolts, studs, rods etc. that featured bolts and hooked grapnels that obviously were used to provide stable anchorage.”

[Survey at 6.] Scarborough concluded that the metallic objects “must have been used to provide security of tension with their intended task.” [Survey at 6.] Although the SAALJ noted that Scarborough conducted “extensive research” on ferry operations for the Survey, the Survey indicates, “all of the various requirements of early Ferry [sic] operation is [sic] not known.” [Recommendation at ¶ 36(c); Survey at 6.]

As support for Bibb County’s exceptions to Scarborough’s location of the ferry in the Survey, Bibb County submitted court orders, court minutes, and ancient deeds. Although the government records submitted by Bibb County do not establish a conclusive location for the POB, the records establish the existence of Waller’s ferry during the time in question and strongly support Bibb County’s contention that Waller’s ferry was located to the north of the ferry location in the Survey.

The record evidence in this matter demonstrates that a substantial amount of activity affecting the location of the POB occurred in Jones County on the Ocmulgee River. On September 11, 1821, the Jones County Inferior Court issued an order on the motion of William Waller appointing commissioners to view and mark out a public road commencing at “William Waller Ferry on the Okemulgee [sic] River,” and make a report to the Ordinary by the first Monday of November 1821. [B-74A.] On November 17, 1821, the Jones County Inferior Court issued an order on the petition of James Turrentine and others requesting the appointment of commissioners to only view and report the propriety of establishing a public road leading to the Ocmulgee River on Turrentine’s land. [B-76A.] The court’s order directed the appointed

commissioners to report to the court on the practicability of such a public road by December 8, 1821. *Id.*

Subsequently, on January 12, 1822, the Jones County Inferior Court issued its decision on the report stemming from Turrentine's petition, and ordered that a public road running through Turrentine's land "to the river near Waller's ferry" be marked out. [B-77A.] The Jones County Inferior Court, on January 17, 1822, then issued an order directing the commissioners to review the roads running to "Waller's and Torrentine's ferrys [sic]" and report to the court which road should be established by law. [B-78A.] On July 6, 1822, Jonathan Davis' property, which was in the possession of William Waller, was sold to Pierce Lewis. [B-81A.] On November 11, 1822, the Jones County Inferior Court ordered the establishment of a ferry on the application of James Turrentine. [B-82A.]

Although the SAALJ deemed these records submitted by Bibb County to be speculative, Georgia law authorized the inferior courts to receive applications for any new road or alteration to an old road, and appoint commissioners to mark out new or altered roads. Act of Dec. 19, 1818, No. 499, § 1 (an Act to alter and amend the Road Laws of this State). Furthermore, the inferior courts were authorized to establish ferries and the toll rate for ferries. *Id.* at § 33. Since the records of inferior courts would be the appropriate location for determining the establishment of ferries and roads leading to ferry sites, it seems prudent not to dismiss these records of the inferior courts as merely speculative.

Nonetheless, according to the Recommendation, "[t]o adopt Bibb County's position that Mr. Scarborough's location of the ferry was the northernmost Terminating Point was incorrect, one would have to engage in conjecture," requiring reliance upon "ancient deed records, roadway locations, newspaper articles, and other indirect and circumstantial evidence."

[Recommendation at 16.] Moreover, the Recommendation noted that unlike Scarborough's determination of the ferry location, Bibb County's proposition that the boundary line commenced at a ferry location up the river from the location identified in the Survey had "no actual basis for support from physical evidence found on the ground." [Recommendation at 16.]

However, the conjecture, as noted in the Recommendation, that one would have to engage in to adopt Bibb County's position that Scarborough's ferry location was incorrect is equally required to adopt Scarborough's conclusion that the ferry location in the Survey is correct. Based on the Survey, Scarborough relied on certain ancient deeds [Survey at A-4, A-18 and A-19.], pictures of undated and unidentified ferry operations [Survey at A-3], and numerous unsupported conclusions throughout the Survey. The Recommendation is unclear why Scarborough's evidence is less speculative than the government records submitted by Bibb County. Nonetheless, the evidence does not support the conclusion that Waller's Ferry was the ferry identified in the Survey.

B. The Corner of the 12th and 13th Districts of Monroe County

Pursuant to the 1822 Act creating Bibb County, the boundary line dividing Bibb County and Monroe County commences at Waller's or Torrentine's Ferry and a direct line runs "to the corner of the 12th and 13th districts of Monroe county on the line dividing Monroe and Houston counties." § 2, 1822 Ga. Laws 22. Although neither Bibb County nor Monroe County has ever disputed the location of the corner of the 12th and 13th Districts, that portion of the boundary line was included in the grand jury presentment issued on November 9, 2004. As a result of its inclusion in the presentment, Scarborough was required to survey that previously undisputed portion of the boundary line.

According to the Survey, Scarborough relied on Thomas Baber's survey and field notes of the 12th Land District reported on July 5, 1821, and Isaac Welch's survey and field notes of the 13th Land District from July 1821 to locate the terminating point of the Bibb County and Monroe County boundary line. [Survey at 9.] Both counties and Scarborough appear to be in agreement that the red oak post used by Welch to mark the corner in question has been eroded or was washed away over time.

Due to the destruction of the original corner marker, Scarborough began his work to locate the corner of the 12th and 13th Districts by examining the original boundary line between Monroe County and Houston County and "gathering evidence of ancient or pre-modern placement of Land Lot corner markers which would support the original field notes." [Survey at 9.] To the west of the district corner, Scarborough located markers, including iron pipes, wire fences and an ancient iron barstock, believed to be called for in the original field notes. [Survey at 10.] To the east of the district corner, Scarborough located iron pipes, large trees, and the centerline of county roads, which he believed to be constructed parallel to the original road beds along the original boundary line between Monroe County and Houston County. [Survey at 10.]

Although Scarborough did not locate any markers that he believed evidenced the true location of the district corner, Scarborough noted that he located an iron pin, a 3/8" diameter rebar, near the point he believed to be the district corner. [Survey at 11.] The evidence in this case shows that the rebar Scarborough located was the pin used by Bibb, Monroe and Crawford County as the corner of the 12th and 13th Land District. Pursuant to Scarborough's calculations in the Survey, Scarborough located the corner of the 12th and 13th Land District at a point 0.8 feet North and 46 feet West of the location currently relied on by the counties. [Survey at 11.]

As a result of altered location of the corner of the 12th and 13th Land Districts, it appears that Scarborough's Survey affected the boundary line of Crawford County. As of September 14, 2009, Crawford County had not been served with a copy of the Survey by Scarborough. [Letter from David Mincy dated September 14, 2009.] Since Scarborough did not timely serve a copy of the Survey on Crawford County, he effectively violated the procedures set forth in the Georgia Code. O.C.G.A. § 36-3-22 (2011).

C. The Holt Alteration

The boundary line between Bibb County and Monroe County has been changed and altered one time since the creation of Bibb County in 1822. In February of 1877, the General Assembly changed and altered the boundary line between Bibb County and Monroe County when it transferred the "residence" of Dr. Leonidas (Lee) Holt and "so much of lot No. 285 as belongs to said Dr. Holt, now lying and being in Monroe county, the same being about fifty or seventy-five acres," from Monroe County to Bibb County. Act of Feb. 20, 1877, No. 270, 1877 Ga. Laws 272-73.

Based on the Survey, Scarborough reviewed ancient deed records "to determine the perimeter of all the land which Dr. Holt owned." [Survey at 21.] The Survey states, "[t]he deed referred to is dated November 7, 1872 and is the instrument of conveyance of all of the property owned by Simon Holt, deceased, to Ellis Howard." [Survey at 21.] Based on the November 7, 1872 deed, Ellis Howard subsequently conveyed "land lying and being in the counties of Monroe and Bibb in said State in part on the waters of the Ocmulgee River," to Dr. Holt. [B-101.] Specifically, the deed indicates that Howard conveyed the following to Dr. Holt: one hundred and fifteen acres in Land Lot 285; eighty-four acres in Land Lot 293; all of Land Lot 294; ten acres in Land Lot 295; and all of fractional Land Lot 319. [B-101.] It is clear from the

November 7, 1872 deed that the Holt Alteration is in error by only attributing “about fifty or seventy-five acres” in Land Lot 285 to Dr. Holt. Nonetheless, based on the description in the November 7, 1872 deed, Scarborough located the one hundred and fifteen acres conveyed to Dr. Holt in Land Lot 285 and indicated that said property was intended to be transferred to Bibb County under the Holt Alteration.

After identifying the portion of Land Lot 285 transferred from Monroe County to Bibb County via the Holt Alteration, Scarborough turned his attention to the portion of the Holt Alteration pertaining to Dr. Holt’s “residence.” Relying on aerial photography from 1938, Scarborough commenced his search for Dr. Holt’s residence by locating “the road leading from said Waltons former residence,” as referenced in the legal description in the November 7, 1872 deed. [Survey at 22; B-101.] Then, relying on “testimony” of Robert Birch, Scarborough was led to “the location of the ‘homesite’ of Dr. Holt,” which was approximately 180 feet east of Land Lot 285 in Land Lot 294. [Survey at 22.]

Based on the reference to “Walton’s former residence” in the November 7, 1872 deed and the United States Supreme Court’s reference to “curtilage” in *Boyd v. United States*, 116 U.S. 616, 630 (1886),⁵ Scarborough concluded that the term “residence” in the Holt Alteration means “the dwelling and immediate grounds.” [Survey at 23.] Despite the 180-foot distance between the residence identified in the survey and Land Lot 285, it appears that Scarborough concluded the residence and Land Lot 285 were contiguous. The Survey, therefore, includes all of the land owned by Dr. Holt in Land Lot 285 along with the identified residence of Dr. Holt

⁵ Scarborough’s reliance on *Boyd* as support for his interpretation of the term “residence” in the Holt Alteration is misdirected, as *Boyd* involved searches and seizures under the Fourth Amendment and the protection against self-incrimination under the Fifth Amendment to the United States Constitution. See *Boyd* at 621.

and appurtenant property in Land Lot 294 in Bibb County, effectively creating an “island” of Bibb County within Monroe County.

In construing a legislative act, it is necessary to first look to the literal meaning of the act, and if the language is plain and does not lead to any absurd or impracticable consequences, the legislative act should be construed according to its terms. *City of Atlanta v. S. States Police Benevolent Ass’n of Ga.*, 276 Ga. App. 446, 453 (2005). Furthermore, “statutes are to be construed in accordance with their real intent and meaning and not so strictly as to defeat their legislative purpose, and statutory construction must square with common sense and sound reasoning.” *Id.*

“Prior to the constitution of 1877 the method of changing county lines was by a special act of the legislature for that purpose.” *Aultman*, 147 Ga. at 629. Under the 1868 Constitution, the General Assembly was given the authority to alter the boundaries of contiguous counties. *See* Ga. Const. of 1868, art. III, § 5, Para. 2. Specifically, the 1868 Constitution stated, “[t]he general assembly may alter the boundaries of, or lay off and establish new counties, or abolish counties, attaching the territory thereof to contiguous counties.” *Id.* Although the Georgia Constitution of 1868 was repealed as a result of the ratification of the Constitution of 1877 in December of that year, the Constitution of 1868 still governed changes to county boundary lines at the time of the Holt Alteration in February 1877.

The SAALJ concluded that Scarborough’s survey of the Holt Alteration was a correct interpretation of the Holt Alteration, and “whether the legislature intended to create an island of Bibb County within Monroe County, is not relevant to a determination of the boundary line between the two counties. [Recommendation at ¶ 48.] According to Monroe County, the General Assembly had the power in 1877 to create an island of Bibb County within Monroe

County because “it had the power to change the county line in whatever way it pleased.”

[Monroe County Post-Hearing Brief at 20.] Based on this position, Monroe County concludes, “nothing is prohibiting the Secretary of State from adopting a county boundary line established by the Legislature in 1877 that includes an island. [Monroe County Post-Hearing Brief at 21.]

To borrow language from the Survey, it is apparent that Scarborough’s depiction of the Holt Alteration resulted in “an obviously peculiar scenario.” [Survey at 23.] If the Survey were accepted, it would result in an “island” of Bibb County within Monroe County due to Scarborough’s interpretation of the Holt Alteration. Monroe County is correct that prior to the ratification of the Georgia Constitution of 1877 in December of that year, the General Assembly had the power to alter county boundary lines. [See Monroe County Post-Hearing Brief at 20.] However, the plain language of the 1868 Constitution, which was controlling at the time the Holt Alteration was enacted in February 1877 (eleven months prior to the ratification of the Constitution of 1877), did not authorize the General Assembly to change the line “in whatever way it pleased,” as purported by Monroe County. Rather, the Constitution of 1868 allowed for boundaries of counties to be changed by “attaching” the property in question to a “contiguous” county. *See* Ga. Const. of 1868, art. III, § 5, Para. 2.

Additionally, according to the Survey, the “legal parlance” at the time of the Holt Alteration was that the term “residence” referred to “the dwelling house and the immediate grounds thereabout.” [Survey at 23.] However, in a brief review of other boundary line legislation at the time of the Holt Alteration, it does not appear that the term “residence” only referred to the dwelling house and immediate grounds thereabout. For example, on February 27, 1877, the General Assembly altered the boundary line between Randolph and Stewart counties by adding “the residence of Joseph Jones” to Randolph County. Act of Feb. 27, 1877, No. 283,

1877 Ga. Laws 278. The 1877 Act changing the line between Randolph County and Stewart County identified the residence of Joseph Jones as Land Lot 40. *See id.* Of import, Land Lot 40 was contiguous to the Randolph County boundary line. In contrast to Scarborough's definition of residence, it appears that the General Assembly, only seven days after the Holt Alteration, used the term "residence" to refer to an entire land lot.

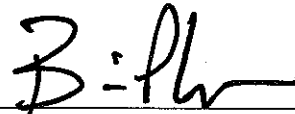
Furthermore, based on the rules of statutory construction, if the Survey accurately depicts the literal language of the Holt Alteration, it would produce a "contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else." *Yasmine's Entm't Hall v. City of Marietta*, 292 Ga. App. 114, 116 (2008). The Constitution of 1868 specifically states that the General Assembly may alter the boundaries of counties by "attaching the territory thereof to contiguous counties." Ga. Const. Art. III, § V, Para. 2 (1868). Accepting Scarborough's interpretation of the Holt Alteration would result in a direct contradiction of the Constitution of 1868, as it would result in an island of Bibb County within Monroe County.

In order to prevent the "absurdity" that would result from accepting the Survey, it is clear that either Scarborough's interpretation of the Holt Alteration is incorrect or that the direct line running from "Waller's or Torrentine's ferry" to the corner of the 12th and 13th Districts is incorrect, as it is not adjacent to the property identified as the Holt Alteration in the Survey.

IV. CONCLUSION

Based on the law and evidence, the Secretary of State cannot in good faith accept the conclusions of the Survey. Based on the foregoing, the Secretary of State, hereby **ORDERS** that the Survey filed by Terry M. Scarborough is **SET ASIDE** and **SHALL NOT** be recorded as set forth in O.C.G.A. § 36-3-25.

This 23rd day of August, 2011.

A handwritten signature in black ink, appearing to read "B. P. Kemp", written over a horizontal line.

The Honorable Brian P. Kemp
Georgia Secretary of State